

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Regulated Industries Committee

BILL: CS/SB 2412

SPONSOR: Regulated Industries Committee and Senator Haridopolos

SUBJECT: Alcoholic Beverages & Tobacco Div.

DATE: March 27, 2006

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|--------|
| 1. | Oxamendi | Imhof | RI | Fav/CS |
| 2. | _____ | _____ | CJ | _____ |
| 3. | _____ | _____ | GA | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

The bill amends s. 20.165(9)(b), F.S., to provide that the Division of Alcoholic Beverage and Tobacco's (division) law enforcement employees must be certified as law enforcement officers by the Department of Law Enforcement under ch. 943, F.S. It provides that, once certified, the division's law enforcement officers shall have the same authority as provided for law enforcement officers generally under ch. 901, F.S., which relates to the arrest powers for the state's law enforcement officers. It also authorizes that they shall have arrests powers under s. 901.15, F.S.

The bill also authorizes the division's law enforcement employees full law enforcement powers, including the authority to make arrests, carry firearms, serve court process, and seize contraband and the proceeds of illegal activities.

The bill provides that the primary responsibility of the division's law enforcement authority is to enforce the alcoholic beverage and tobacco laws. They would also have primary responsibility to enforce other state laws which the division, all state law enforcement officers, or beverage enforcement agents are specifically authorized to enforce. Their primary responsibility would include the powers of a deputy sheriff, but only after consultation or coordination with the appropriate local sheriff's office or when the division participates in the Florida Mutual Aid Plan during a declared state emergency.

The bill deletes the provision that restricts enforcement to any violation that could result in an administrative penalty. It also deletes the provision that restricts the enforcement of all criminal laws to jurisdictions where the division is a party to a mutual aid agreement.

The bill authorizes the director of the division to issue a temporary alcoholic beverage permit to nonprofit civic organization more than three times per calendar year, but not more than 15 times per calendar year. The civic organization must have the approval of the incorporated city, town, or board of county commissioners that has jurisdiction over the location of the premises.

The bill has an effective date of July 1, 2006.

This bill substantially amends sections 20.165 and 561.422, Florida Statutes:

II. Present Situation:

The Division of Alcoholic Beverages and Tobacco (division) of the Department of Business and Professional Regulation (department) is the agency authorized to enforce the provisions of the Beverage Law in 561, 562, 563, 564, 565, 567, and 568, F.S. The division also enforces the tobacco laws in ch. 210, F.S.

Law Enforcement Authority

All division employees have the legal authority to access and inspect premises licensed by the division for the purpose of collecting taxes and examining the books and records of all licensees.¹

Some of the division's employees are law enforcement officers certified under ch. 943, F.S. Section 20.165(9)(b), F.S., provides that these employees have felony arrest powers under s. 901.15(10), F.S.²

Section 20.165(9)(b), F.S., also limits law enforcement authority of the division's law enforcement certified employees. It provides that these employees shall have all the powers of deputy sheriffs to investigate, enforce, and prosecute, throughout the state, violations and violators of:

- a. Parts I and II of chapter 210; part VII of chapter 559; and chapters 561-569; and the rules promulgated thereunder, as well as other state laws which the division, all state law enforcement officers, or beverage enforcement agents are specifically authorized to enforce.
 - b. All other state laws, provided that the employee exercises the powers of a deputy sheriff, only after consultation and in coordination with the appropriate local sheriff's office, and only if the violation could result in an administrative proceeding against a license or permit issued by the division.
2. Enforce all criminal laws of the state within specified jurisdictions when the division is a party to a written mutual aid agreement with a state agency, sheriff,

¹ Section 20.165(9)(a), F.S.

² However, s. 901.15(10), F.S., does not relate to felony arrests. It provides for arrests for a misdemeanor violation based upon a signed affidavit or when committed in the presence of the law enforcement officer. The footnote to s. 20.165, F.S., notes that s. 901.15(10), F.S., was redesignated as s. 901.15(13), F.S., by s. 57, ch. 99-193, L.O.F., and further redesignated as s. 901.15(12), F.S., pursuant to the repeal of former subsection (1) by s. 4, ch. 2004-17, L.O.F.

or municipal police department, or when the division participates in the Florida Mutual Aid Plan during a declared state emergency.

According to the division, its law enforcement employees routinely assist local police and sheriffs in law enforcement activities away from alcoholic beverage-licensed premises. The division's law enforcement employees have provided traffic control and security assistance after a hurricane. They have also conducted investigations at events frequented by youth, e.g., spring break activities, relating to consumption of alcoholic beverages by persons under the age of 21. The division represents that they frequently witness law violations or potential violations, e.g., a physical altercation between belligerents, and are unable to adequately respond or assist law enforcement officers from other agencies because of the current limitations under s. 20.165(9)(b), F.S.

According to the division, it is currently entering into memorandums of understanding (MOU) with the state's county sheriffs. The MOUs would allow the division's law enforcement employees to have the authority of a deputy sheriff under s. 20.165(9)(b)2., F.S.

Temporary Permits for Nonprofit Civic Organizations

Section 561.422, F.S., authorizes the director of the division to issue temporary alcoholic beverage permits to bona fide nonprofit civic organizations to sell alcoholic beverages for consumption on the premises only. To obtain the permit, the civic organization must file an application with the division, present a local building and zoning permit, and pay a fee of \$25 per permit. The temporary permit is subject to the following additional conditions:

- The permitted period cannot exceed three days;
- The permit is subject to any state law or municipal or county ordinance regulating the time for selling such beverages;
- All net profits from sales of alcoholic beverage collected during the permit period must be retained by the nonprofit civic organization;
- The nonprofit civic organization may be issued only three such permits per year.

Section 561.422, F.S., authorizes the civic organization licensed under this provision to purchase alcoholic beverages from a distributor or vendor licensed under the Beverage Law.

III. Effect of Proposed Changes:

Law Enforcement Authority

The bill amends s. 20.165(9)(b), F.S., to provide that the division's law enforcement employees must be certified as a law enforcement officer by the Department of Law Enforcement under ch. 943, F.S. It provides that, once certified, the division's law enforcement officers shall have the same authority as provided for law enforcement officers generally under ch. 901, F.S., which relates to the arrest powers for the state's law enforcement officers. It also authorizes that they shall have arrests powers under s. 901.15, F.S.

The bill also authorizes the division's law enforcement employees full law enforcement powers, including the authority to make arrests, carry firearms, serve court process, and seize contraband and the proceeds of illegal activities.

The bill amends s. 20.165(9)(b), F.S., to delete the specific provision that the division's law enforcement employees have felony arrest powers under s. 901.15(10), F.S. (The correct reference is s. 901.15(12), F.S.)³

The bill provides that the primary responsibility of the division's law enforcement authority is to enforce the alcoholic beverage and tobacco laws. They would also have primary responsibility to enforce other state laws which the division, all state law enforcement officers, or beverage enforcement agents are specifically authorized to enforce. Their primary responsibility would include the powers of a deputy sheriff, but only after consultation or in coordination with the appropriate local sheriff's office or when the division participates in the Florida Mutual Aid Plan during a declared state emergency.

The bill deletes the provision that restricts enforcement to any violation that could result in an administrative penalty. It also deletes the provision that restricts the enforcement of all criminal laws to jurisdictions where the division is a party to a mutual aid agreement.

Temporary Permits for Nonprofit Civic Organizations

The bill amends s. 561.422, F.S., to authorize the director of the division to issue a temporary alcoholic beverage permit to nonprofit civic organization more than three times per calendar year, but not more than 15 times per calendar year. The civic organization must have the approval of the incorporated city, town, or board of county commissioners that has jurisdiction over the location of the premises.

Effective Date

The bill has an effective date of July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

³ *Supra* at n. 2.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
